

## **Draft Minutes**

### **Delta Protection Commission**

**Thursday, September 28, 2000**

#### **1. Call to Order.**

The meeting was called to order at 6:30 p.m. by Chairman Pat McCarty. In attendance were Chairman McCarty and Commissioners Brean, Broddrick, Calone, Coglianese, Ferreira, Gutierrez, Harris, Vice Chair Mello, Nottoli, Salmon, Sanders, and Thomson.

#### **2. Public Comments**

There were no public comments.

#### **3. Minutes of Last Meeting.**

Vice Chair Mello asked that page four, paragraph one be changed to read "South Delta" and that the reference to a public hearing on page 12 be deleted.

On a motion by Commissioner Harris, and a second by Vice Chair Mello, the draft minutes were approved by voice vote. Commissioners not in attendance at the last meeting abstained.

#### **4. Chairman's Report.**

Chairman McCarty noted that the Commission's next meeting is scheduled for Thursday, November 16, 2000 at the Jean Harvie Community Center. He said a reception has been scheduled honoring Senator Patrick Johnston on Thursday, October 26, 2000 at 5: 00 p.m. in the Ryde Hotel. Chairman McCarty said several of the Commissioners are running for government office and will not be returning as Commissioners including Commissioners Matthews, Canciamilla, and Harris. He noted that Commissioner Coglianese will be "changing seats" and will be representing cities in the West Delta (Contra Costa and Solano Counties). He noted the Commission has received notice that the Speaker of the Assembly has appointed Assemblymember Helen Thomson to be the ex-officio member of the Commission representing the Assembly.

#### **5. Commissioner Comments/Announcements.**

Vice Chair Mello said Tyler Island had received most of its approvals for a dredging project associated with levee maintenance, and had recently received

permit approvals. The bid will be awarded on October 4, 2000. He noted that there had been helpful coordination through the Dredge TAP.

Commissioner Harris thanked the staff and members for their work in the Delta. He said the Commission is an important part of the Delta and regretted the Commission does not have more teeth, but said the Commission has a key role in representing the grassroots concerns about Delta issues. He said he is afraid that Southern California will return with demands for more water from the Delta and will eventually build a peripheral canal.

Commissioner Calone said that Sherman Island is now owned by the State and noted that fewer persons are allowed to hunt on Sherman Island now than when the land was in private ownership. He noted that there is some hunting allowed on Twitchell Island, but it is limited. He suggested that there should be hunting allowed on publicly owned land.

Commissioner Calone commented that he had witnessed a situation on Highway 160 which would have been exacerbated by installation of a guardrail on the side of the Highway as proposed by CalTrans, including recreational vehicles and agricultural vehicles. He said there should not be anything done in the Delta which would hinder agriculture in the Delta.

## **6. Attorney General's Report.**

Dan Siegel told the Commission that a lawsuit has been filed by Regional Council of Rural Counties and the Central and South Delta Water Agencies against the Resources Agency and the California Environmental Protection Agency over the CALFED environmental document on 39 different grounds and reverse validation challenge (of a contract) stating that agreements were entered as part of the process and that those agreements were inappropriate. He noted there might be additional lawsuits filed.

Commissioner Sanders asked in which court the suit was filed; Mr. Siegel said in Sacramento County Superior Court.

Commissioner Coglianesse asked if the Implementation Memorandum of Understanding is one of the agreements subject to the lawsuit; Mr. Siegel said no, the lawsuit would not have an impact on the MOU.

## **7. Executive Director's Report.**

Margit Aramburu said staff has attended Delta Levees and Habitat Advisory Committee Meetings; met with all five County planning departments for an update of Delta issues; attended a briefing by Corps on Comprehensive Flood Control Study; attended a meeting set up by Congressman Ose regarding North Delta National Wildlife Refuge, and CALFED meetings including Management

Team, Levees and Channels Work Group, North Delta Work Group, South Delta Work Group, and Ad Hoc Recreation Group.

Ms Aramburu said she scheduled two meetings with CalTrans and four Reclamation Districts regarding the Highway 160 barriers. CalTrans did not attend the second meeting resulting in a letter to Senator Johannesen asking for help is getting CalTrans to relook at the guardrail project.

Ms Aramburu circulated a draft newsletter which staff would like to distribute to better communicate issues from the participating agencies on the Commission. She noted that staff will be posting all future meeting notices, minutes, and staff reports on the Commission's web site.

Vice Chair Mello noted that the Pending Project on Prospect Island is the subject of a lawsuit over the adequacy of the environmental document filed by landowners on Ryer Island. He noted that the project is currently halted due to lack of funding, and if the project proceeds, there will be a new environmental document. He said he is very concerned about possible impacts associated with a wetland restoration project proposed by the State and federal governments. Ms Aramburu noted that there are revisions proposed to the proposed project on Prospect Island, and the Commission will receive a briefing at the November meeting. Vice Chair Mello asked that the Commission be briefed on the seepage situation. He also expressed his concern about the cost to private landowners to develop information to support their positions on such projects.

Commissioner Broddrick noted that the Prospect Island project is not a Category III, or CALFED project, and the acquisition was funded through Congressional appropriation and only minor funds have been allocated from the Category III program. He asked that the staff report outline the sources of funds for the project.

## **8. Public Hearing on Adopting the Policies of the Management Plan for the Primary Zone of the Delta as Regulations.**

*(Note: This agenda item was taken out of order.)*

Ms Aramburu said the public hearing is the last of three scheduled public hearings on the proposed adoption of the Commission's policies as regulations. Two public hearings were held: one on September 14 at the Roberts Union Farm Center--there were no public comments, and one on September 20 at the Antioch Community Center--there were no public comments. Five written comments were received.

Commissioner Nottoli asked if Sacramento County staff had contacted Ms Aramburu prior to submitting the comment letter; Ms Aramburu said no. He noted that the issues had been discussed in the past and he would set up a meeting to discuss the issues identified in the letter.

Chairman McCarty opened the public hearing, with the intention of leaving the hearing open until the end of the meeting.

There were no public comments.

#### **9. Briefing and Possible Action on CALFED Record of Decision and Attachment C: Implementation Memorandum of Understanding**

Chairman McCarty noted that CALFED recently approved the Record of Decision approving the Final Environmental Impact Report. He said attached to the ROD was a Memorandum of Understanding that continues the governance component of CALFED and said the Commission has been invited to sign the MOU and continue its participation on the Policy Group.

Chairman McCarty said the CALFED Subcommittee reviewed the ROD and decided it was not necessary to send a comment letter. The CALFED Subcommittee reviewed the Governance MOU and recommended that the Commission sign the MOU and continue to participate on the Policy Group. If the Commission decides to sign the MOU, the Commission must designate a representative and an alternate to the Policy Group.

Chairman McCarty introduced Wendy Halverson-Martin, CALFED's Deputy Director.

Ms Halverson-Martin said she believes that CALFED is the way to solve difficult problems in management of California's resources, and thanked the Commission for its assistance in that mission. She reviewed the status of the Record of Decision and its purposes. She noted that the ROD does not preclude projects NOT in the ROD, it does not affect local communities' ability to meet local water needs, and does not affect regulatory authorities of the member agencies. She said she would be pleased to make copies of the ROD available, and reviewed the list of attachments to the ROD. She noted that the bases of the ROD are from the environmental document, the Phase II Report and the Implementation Plan, as well as the Framework for Action (June 2000). She noted that in the implementation phase, each project would need to be studied for its environmental impacts. She noted the Implementation MOU will serve as the governance program for CALFED until such time as new legislation is passed. She said that if the Commission signs the MOU, the Commission will become a member of the Policy Group and will participate in the decision-making process. She urged the Commission to continue its role on the Policy Group.

Commissioner Harris noted that the legislation recently considered by the Legislature and not passed included the right of eminent domain for CALFED. He said that had not been discussed at any CALFED meetings. He asked if eminent domain is a goal of CALFED; Ms Halverson-Martin said that is not the intent of CALFED, or reflected in its commitments.

Vice Chair Mello said the CALFED Subcommittee had reviewed the proposal and recommended continued participation on the CALFED Policy Group. However, he said he is concerned that mitigation measures NOT included in the environmental document (Appendix B) include many of the suggestions the Delta Protection Commission had submitted to CALFED. He said the Commission has attempted to have input to the process, but those comments are not incorporated into the program, and the Commission does not have any way to ensure its comments are incorporated into the program. Ms Halverson-Martin said she would be glad to sit down and go through the Commission's comments to determine why they were not included as mitigation measures. She said CALFED has not solved all the issues/problems that have been identified, but there is a sincere effort to address issues as the program goes forward incrementally. She said CALFED has attempted to respond to comments made, particularly from agriculture. She said it may be that mitigation measures are more appropriately addressed when specific projects are proposed and analyzed.

Commissioner Coglianese asked who was responsible for making decisions about which mitigation measures would be included and which would not; Ms Halverson-Martin said the signatories are ultimately responsible and staff worked with a team of legal advisors to create a document which met the legal requirements of CEQA and NEPA and reflected common sense. She said if there is interest by the entire Commission in receiving more information on these matters, she could return prepared to address those issues. Commissioner Coglianese said it's unfortunate the Policy Group stopped meeting in public at the end of the process so she and others do not know how the final decisions were made. She said it's discouraging to see comments addressed with reference to the same language as comments from throughout the State; she said it leaves a feeling that one cannot penetrate the process and one doesn't know who is ultimately accountable because one doesn't know who is really in charge. Ms Halverson-Martin said the issue of public participation was not her decision. She said she hopes the example of CALFED demonstrates the intent of the program. She said the Delta's interests are in the room and have those positions communicated to CALFED and back to the Delta Protection Commission.

Commissioner Nottoli noted that some of the omitted mitigation measures are troubling from a local government standpoint, including the suggestion that the program include a reaffirmation of the State's right to farm policy, and the response that the right to farm policy was designed to address urban encroachment and thus was not relevant. Commissioner Nottoli said the "right to farm" concept goes to the ability to continue to farm, and CALFED does include actions which could preclude viable agricultural operations. He said some of the issues raised by the Commission, particularly regarding agriculture and agricultural activities, should be institutionalized within the CALFED program so that 20 to 30 years down the road they would not be forgotten, and he would like to discuss this matter further with CALFED staff. He noted that agriculture is a critical part of the Delta and the CALFED environmental document does not

reflect those values. Ms Halverson-Martin said she has an understanding of agriculture and agricultural issues, and she agreed that there are some important issues Statewide that need to be addressed, but stated that CALFED may not be the program to address some of the concerns that do need to be addressed Statewide. Commissioner Nottoli stated that CALFED is an important piece of the picture in addressing agriculture in the Delta because the Delta has rich soil and ready access to water for irrigation. He said if agriculture is going to continue in the Delta, CALFED will have to play a role in making that happen.

Chairman McCarty said Commissioner Nottoli expressed the concerns of the Delta and that Ms Halverson-Martin had responded that CALFED cannot do all things for all people. He said that when CALFED was conceived, its goal was to fix everything that was wrong and that goal has had to be compromised along the way. He said the impacts of two very critical components addressed in the CALFED documents that are also addressed in the Commission's Plan are water and wildlife habitat. Chairman McCarty said implementation of those components of the CALFED program tear at the fabric of agriculture more than anything else, and to address those two elements and not address the land use which is primarily agriculture results in Delta interests feeling unsatisfied. He asked that the CALFED sensitivity should be raised in those areas, and that some of the issues raised should be incorporated into the CALFED policies that will be used to implement the program in the third phase.

Vice Chair Mello said he fears that CALFED is ignoring one of its commitments that there will be no significant redirected impacts. He said it feels like the delta is the sacrificial lamb, and that the mitigation measures requested to ensure that doesn't happen have been rejected. He noted that the negative socio-economic impacts directed to the Delta to solve the problems of the rest of the State are going to ruin the Delta community.

Ms Halverson-Martin asked the Commission to continue to work within the CALFED program to help flesh out the general plan. She said nobody is happy with all aspects of the CALFED program, but there is something that keeps each party at the table. She said there is the opportunity to make profound changes in the future. She said the problems of the State started a long time ago and will take a long time and hard work to fix.

Commissioner Salmon said he has attended many CALFED meetings, and now in Phase III of CALFED, the comments made by him and many others in the South Delta have not been incorporated into the program. He said it's very sad that the program has gotten this far without the South Delta concerns being heard by CALFED. He said this results in the CALFED process losing credibility. Ms Halverson-Martin said changes have been made in the program as a result of comments, for example comments by Alex Hildebrand regarding the ecosystem restoration program. She said part of CALFED's job is to be good listeners, however, CALFED staff has to balance the comments submitted Statewide and

try to hammer out solutions that will provide the best opportunities to move forward. She said the program has done more than any other program, although that may not be enough. She said CALFED sincerely wants help from the Delta Protection Commission.

Commissioner Broddrick said the Commission has been following the CALFED process for many years, and there is still fear and trepidation. He said that CALFED staff has attended many Commission meetings and other public meetings in the Delta, and he said there is no silver bullet in addressing difficult problems. He said CALFED has developed a lot more awareness of Delta issues and he urged that the Delta community and others throughout the State continue to participate in the CALFED process with the goal of developing solutions to these difficult problems faced statewide. He said it will take a long time, but said CALFED is the only game in town to develop a durable solution for the next generations.

Chairman McCarty asked for public comments.

Warren Merwin, RD 999, said a ditch would not help the problems of the South Delta and water could easily be sent to the South Delta to help them out; he doesn't know why they don't do it.

Rogene Reynolds, South Delta resident, said what keeps Delta residents and landowners at the CALFED table is self-defense. She said the South Delta does not need listeners and hand-holders, the South Delta needs problem solvers to solve the problems created by the water projects. She said she has not read the entire environmental document, nor the entire ROD, and noted these were not discussed in public and said the lawsuit has merit. She said she thinks it's blackmail that the Delta Protection Commission has to sign onto the MOU to have a representative on the Policy Group. However, if that is the only way to be heard, she supports the Commission signing the MOU but a letter should be sent expressing reservations of the Commission.

Chairman McCarty closed the public hearing.

Commissioner Nottoli asked for clarification of the recommendation of the Subcommittee; Ms Aramburu said the Subcommittee did support signing the MOU. He asked if there was a recommendation to identify any reservations in a letter to be sent to CALFED; Vice Chair Mello said there was some discussion of reservations.

Commissioner Coglianese also identified issues discussed and agreed that it would be helpful to transmit a letter stating there are still significant reservations about the CALFED program in the Delta.

Commissioner Salmon concurred that a letter should be sent to clarify to CALFED that while a part of the CALFED Policy Group, the Commission does not agree with all aspects of the CALFED program.

Vice Chair Mello agreed, but pointed out that the alternative for the Commission is to not participate, and he recommended that the Commission sign the interim governance MOU and participate in the decision-making process.

Supervisor Thomson agreed that the Commission should be part of CALFED's governing body in order to help guide development of policy that will affect the Delta.

Ms Aramburu clarified that the Commission is not being asked to sign the Record of Decision, only the interim governance MOU.

Commissioner Sanders suggested that an accompanying letter describe the length of the Commission's participation in the CALFED planning process, the length of time the Commission has participated on the Policy Group, and the Commission's intent to participate on the new Policy Group. This would provide an historical context and it states facts, without adding any language that could be conceived as being pejorative. He noted that the MOU does not include the Delta Protection Commission as a participant in the text (page 1 and page 4) and asked if that should be amended; Ms Halverson Martin said the listings include the agencies that signed on August 28 and while there is text which allows other agencies to sign the MOU, there will not be changes to the text of the MOU. She said others in a similar situation are the State Reclamation Board and Department of Health Services.

Commissioner Nottoli suggested that an accompanying letter should include should include restatement of the concerns identified by the Commission in the past to clarify that the Commission will be at the table, but will not abandon the issues and concerns raised in the past.

Vice Chair Mello moved that the Commission vote to sign the MOU to remain on the Policy Group, and that the Executive Director should be the representative of the Commission and the Chairman should be the Alternate, to be accompanied by a letter describing the Commission's past positions [letter to be approved by the Chair]; the motion was seconded by Commissioner Thompson; the motion was approved unanimously by voice vote.

Ms Aramburu commented it would be appropriate to follow-up with some discussion of agricultural issues with CALFED, the Delta Protection Commission, and the Delta Counties, and other parties.

Commissioner Coglianese asked if a decision has been made whether the Policy Group meeting on December 11 will be a public meeting and if others would be



open to the public; Ms Halverson Martin said the MOU states there will be at least one public Policy Group meeting per year and the December 11 meeting will be a public meeting.

**10. Public Hearing on Adopting the Policies of the Management Plan for the Primary Zone of the Delta" as Regulations** *(continued)*

Chairman McCarty asked if there was any public comment. There was none. The public hearing was closed. However, he noted that written comments may be submitted through 5 p.m. the following day.

Ms Aramburu said a staff recommendation would be prepared for consideration at the next meeting and thanked the Attorney General's staff for their assistance.

Vice Chair Mello asked if the comment letters received to date raise new issues; Ms Aramburu said the issues seem related to the past and said she believed that there would not need to be changes or delays in consideration. She noted that if there are minor changes, the proposed regulations would not be recirculated. The proposed regulations would be recirculated only if there are major changes.

Commissioner Calone asked if the issue of habitat conservation issues adjacent to agriculture should now be addressed in the Plan; Ms Aramburu said that is an important issue and that staff would be pursuing that topic in the future in partnership with the Counties and other key agencies and landowners. Proposed changes would then return to the Commission in the future for a public hearing after preparation of a report. Commissioner Calone suggested the Plan be reviewed to determine the need for updates and changes.

Vice Chair Mello agreed with Commissioner Calone regarding the need to further address the issue of buffer zones in relation to habitat projects.

Chairman McCarty recalled the Commission did address habitat and conservation easements, directing that those projects be located where they would have minimal impact on agriculture--a mosaic, with habitat on the marginal lands. He agreed that this topic should be revisited in the future, and that the Plan should be revisited from time to time.

**11. Adjourn.** The meeting was adjourned at 8:20 p.m.